

UNITED STATES COURT OF APPEALS

Filed 12/17/96

TENTH CIRCUIT

JOHN LAWRENCE DUBOIS,

Petitioner-Appellant,

v.

EDWARD EVANS, Warden;
ATTORNEY GENERAL OF THE
STATE OF OKLAHOMA; and
OKLAHOMA COURT OF APPEALS,
Oklahoma Court of Criminal Appeals,

Respondents-Appellees.

No. 96-6143

(D.C. No. CIV-93-2040-R)
(W. D. Ok.)

ORDER AND JUDGMENT*

Before TACHA, BALDOCK, and BRISCOE, Circuit Judges.**

Petitioner-Appellant John Dubois asserts in his petition for habeas corpus that he

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. 34.1.9. The case is therefore ordered submitted without oral argument.

was convicted of duplicative counts of his indictment in violation of his federal double jeopardy rights. The district court denied the petition, and Petitioner then applied to this court for a certificate of appealability pursuant to 28 U.S.C. § 2253. We granted Petitioner's application and ordered Respondents to file a brief because, on its face, the indictment did appear to violate Petitioner's constitutional rights.

Respondents' brief filed with this court includes various attachments which were apparently not presented to the district court. As it is not this Court's function to take evidence and find facts, we now remand this matter to the district court so that it may further consider the petition in light of the parties' newly offered evidence.

REVERSED AND REMANDED.

Entered for the Court,

Bobby R. Baldock
Circuit Judge